

LAW OFFICES OF MIKEL D. BRYAN, P.C.
MIKEL D. BRYAN (SBN 84010)
550 Doyle Park Drive
Santa Rosa, California 95405
(707) 528-1231
Fax: (707) 528-3143

Attorney for Defendant
B & B Management Group, LLC,
dba Bellach's Leather for Living

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SUSAN SANDELMAN, AS TRUSTEE
OF THE ESAN TRUST,

Plaintiff,

v.

B&B PROPERTY MANAGEMENT, LLC,
dba BELLACH'S LEATHER FOR LIVING,

Defendant.

No. C08 00681 HRL

DEFENDANT'S **AMENDED** NOTICE OF
MOTION AND MOTION TO SET ASIDE
DEFAULT [FRCP 55(c)]

Complaint Filed: January 29, 2008

Date: JULY 8, 2008

Time: 10:00 a.m.

Courtroom: 2

Judge: Hon. Howard R. Lloyd

TO: THE PLAINTIFF, SUSAN SANDELMAN, AS TRUSTEE OF THE ESAN TRUST
AND TO HER ATTORNEYS OF RECORD: COLEMAN & HOROWITT, LLP:

PLEASE TAKE NOTICE that on JULY 8, 2008, at 10:00 a.m., or as soon thereafter as
the matter may heard in Courtroom 2 of the above entitled Court, located at 280 First Street, San
Jose, California 95113, the defendant, B & B Management Group, LLC, dba Bellach's Leather
for Living, erroneously sued herein as B&B Property Management, LLC, dba Bellach's Leather
for Living ("the moving party") will and hereby does move the Court pursuant to Rule 55(c) of
the Federal Rules of Civil Procedure to set aside the Default entered by the Clerk on April 8,
2008.

This motion is brought on the grounds surprise, excusable mistake, inadvertence or
excusable neglect which caused the filing of the moving party's responsive pleading, a motion to
stay the proceedings, to be lodged within two hours of the notice that the default had been filed

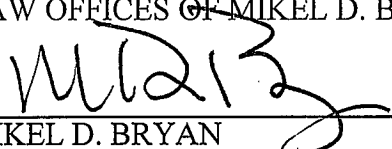
1 with the Clerk of Court, without notice or warning from the Plaintiff's counsel, and despite the
2 fact that counsel for the Plaintiff and moving party's counsel herein had been discussing the
3 status of the pleadings, the case, and contractual mediation and arbitration, but the attorney for
4 the Plaintiff failed to advise the moving party that the default was going to be taken until after the
5 fact.

6 This motion is based on this Notice of Motion and Motion, the Memorandum of Points
7 and Authorities filed herewith, the Declaration of Mikel D. Bryan, the pleadings, records and
8 papers filed herein, and such other and further oral and documentary evidence and legal
9 memoranda as may be presented at or by the hearing on said Motion.

10
11 Dated: June 3, 2008

LAW OFFICES OF MIKEL D. BRYAN, P.C.

12
13 By:


14 MIKEL D. BRYAN
15 Attorney for Defendant and Moving Party,
16 B & B Management Group, LLC, dba Bellach's
17 Leather for Living
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PROOF OF SERVICE

[FRCP 5(B)]

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to this action. My business address is 550 Doyle Park Drive, Santa Rosa, California.

On the date set forth below, I served the attached:

DEFENDANT'S AMENDED NOTICE OF MOTION AND MOTION TO SET ASIDE
DEFAULT [FRCP 55(c)]

on the interested parties in this action, by placing a true copy thereof, addressed as follows:

Attorney for Plaintiff, Susan Sandelman, Trustee of the Esan Trust

Darryl J. Horowitz

Bonnie J. Anderson

COLEMAN & HOROWITT, LLP

499 West Shaw, Suite 116

Fresno, California 93704

Telephone: (559) 248-4820

Fax: (559) 248-4830


/ X / (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practice of our office for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for processing.

/ / (BY OVERNIGHT DELIVERY) I caused each such envelope to be picked up by the business which engages in overnight delivery service, following the instructions for express mailing and using the overnight delivery mail envelope with postage fully prepaid thereon.

/ / (BY PERSONAL SERVICE) I caused each such envelope to be delivered by hand to the address(es) noted above.

/ / (BY FACSIMILE) I caused the said document to be transmitted by Facsimile machine to the number indicated after the address(es) noted above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Santa Rosa, California on 06-03-08.


Jolene Strange